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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES S. TATE, JR., M.D.,

Plaintiff,

v.

STATE OF NEVADA BOARD OF
MEDICAL EXAMINERS, et al.,

Defendants.

2:11-CV-1613 JCM (VCF)

ORDER

Presently before the court is plaintiff Dr. James S. Tate's emergency motion for a preliminary injunction pending appeal pursuant to Federal Rule of Appellate Procedure 8. (Doc. #23). Defendants have not filed a response.

In his motion, Dr. Tate requests a speedy response from this court should it be inclined to deny the motion. Accordingly, this court submits this order prior to defendants filing their response.

"A party must ordinarily move first in the district court for . . . an order suspending, modifying, restoring, or granting an injunction while an appeal is pending." Fed. R. App. P. 8©. "To obtain a stay, pending appeal, a movant must establish a strong likelihood of success on the merits, or failing that, demonstrate a substantial case on the merits provided that the harm factors militate in its favor." *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987).

The court does not find that Dr. Tate has carried his burden. First, neither Dr. Tate's current motion, nor his previous motion for a preliminary injunction, establish a "strong likelihood" that the

1 Ninth Circuit will reverse its decision in *Mishler v. Cliff*, 191 F.3d 998 (9th Cir. 1999). Second, Dr.
2 Tate has not established that “the harm factors militate in [his] favor,” because defendants have
3 already voided the report to the National Practitioner Data Bank that Dr. Tate seeks to enjoin. *See*
4 Def.’s Opp. Prelim. Inj. Ex. 6. Dr. Tate has not provided this court with any evidence tending to
5 establish that defendants are attempting, or will attempt, to resubmit the report.

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that plaintiff’s motion for a
8 preliminary injunction pending appeal (doc. #23) be, and the same hereby is, DENIED.

9 DATED October 24, 2011.

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UNITED STATES DISTRICT JUDGE
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